

# Obtaining Custody of a Juvenile Following a Criminal Traffic Offense

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## 2.1 When a Juvenile May Be Taken Into Custody Following a Traffic Offense

A juvenile must not be taken into custody for committing a traffic civil infraction. Instead, a police officer may "stop the person, detain the person temporarily for purposes of making a record of vehicle check," and issue a citation. MCL 257.742(1); MSA 9.2442(1).

In most cases, the juvenile will not be taken into custody after being found violating a criminal traffic law or ordinance. MCL 257.728(1); MSA 9.2428(1), states:

"When a person is arrested without a warrant for a violation of this act punishable as a misdemeanor, or an ordinance substantially corresponding to a provision of this act and punishable as a misdemeanor, under conditions not referred to in section 617, 619, or 727,\* the arresting officer shall prepare, as soon as possible and as completely as possible, an original and 3 copies of a written citation to appear in court containing the name and address of

\*See Sections 2.1(A) and (B), immediately below, for discussion of these statutory sections.

the person, the violation charged, and the time and place when and where the person shall appear in court. The officer shall inform the offender of the violation and shall give the second copy of the citation to the alleged offender. If the person arrested demands, he or she shall be arraigned by a magistrate or probate court as provided in section 727 in lieu of being given the citation.”

\*See Sections 2.1(C) and 2.4–2.7, below, for a discussion of an officer’s authority to take custody of a juvenile pursuant to the Juvenile Code and related court rules.

Thus, unless the circumstances fall under §§617, 619, or 727 of the Michigan Vehicle Code, or unless the juvenile demands to be “arraigned” immediately in the “juvenile court,” he or she may be issued a citation alleging a misdemeanor and released. A citation or appearance ticket may not be issued to the juvenile for a felony. MCR 5.931(C) and 5.903(B)(3). The officer may consider the nature of the offense when deciding whether to take custody of a juvenile. MCR 5.933(A)(3)(a).\*

## A. Following an Accident

\*See Chapter 9 for a description of offenses contained in §625 of the Michigan Vehicle Code.

Sections 617 and 619 of the Michigan Vehicle Code, MCL 257.617 and 257.619; MSA 9.2317 and 9.2319, outline the requirements of drivers following serious accidents. A police officer may arrest a person without a warrant following an accident if the officer has reasonable cause to believe that, *at the time of the accident*, the driver was violating MCL 257.625; MSA 9.2325, or a local ordinance substantially corresponding to this section. MCL 257.625a(1)(a); MSA 9.2325(1)(1)(a).\* The police officer does not have to witness the violation or accident.

## B. For Certain Serious Offenses

MCL 257.727; MSA 9.2327, allows for persons, including minors, to be arrested without a warrant and taken before a court in the following circumstances:

- F where the person is charged with negligent homicide;
- F where the person is charged with one of the following offenses:
  - driving under the influence of alcoholic liquor and/or a controlled substance, MCL 257.625(1)(a); MSA 9.2325(1)(a), or a local ordinance substantially corresponding to this section;
  - driving with an unlawful bodily alcohol content, MCL 257.625(1)(b); MSA 9.2325(1)(b), or a local ordinance substantially corresponding to this section;
  - driving while visibly impaired, MCL 257.625(3); MSA 9.2325(3), or a local ordinance substantially corresponding to this section;

\*See Chapter 9 for a description of some of these offenses.

- driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing death, MCL 257.625(4); MSA 9.2325(4); or
  - driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing serious impairment of a body function, MCL 257.625(5); MSA 9.2325(5);
- F where the person is charged with reckless driving, in violation of MCL 257.626; MSA 9.2326, unless it appears that release of the driver will not constitute a public menace; or
- F where the person does not have in his or her immediate possession a valid operator's license, chauffeur's license, or a receipt for a surrendered license issued pursuant to MCL 257.311a; MSA 9.2011(1), unless "the arresting officer otherwise satisfactorily determines the identity of the person and the practicability of subsequent apprehension" if the person fails to appear.

MCL 257.625a(1)(b); MSA 9.2325(1)(1)(b), provides for warrantless arrest of a person even though the officer did not witness the alleged violation. That section allows for warrantless arrest where:

"The person is found in the driver's seat of a vehicle parked or stopped on a highway or street within this state if any part of the vehicle intrudes into the roadway and the peace officer has reasonable cause to believe the person was operating the vehicle in violation of section 625 or a local ordinance substantially corresponding to section 625."

### C. Under the Juvenile Code

The Juvenile Code provides the broadest basis on which to take custody of a juvenile charged with committing a traffic offense. MCL 712A.14(1); MSA 27.3178(598.14)(1), allows a police officer, sheriff, or deputy sheriff, without a court order, to take into custody any juvenile who is found violating any law or ordinance, or whose surroundings are such as to endanger the juvenile's health, morals, or welfare. If the juvenile is in custody or custody is requested, the court must conduct a preliminary hearing. MCR 5.932(A) and MCR 5.935(A)(1).\*

If the juvenile is not in custody or if custody is not requested, the court may hold a preliminary inquiry on a citation or appearance ticket. MCR 5.931(C) and 5.932(A). After issuing a citation to the juvenile, the officer must submit a copy of the citation to the court with jurisdiction of the offense. MCL 257.727c(1); MSA 9.2327(3)(1).\*

\*See Section 3.13 for a discussion of preliminary hearings.

\*See Section 3.11 for a discussion of preliminary inquiries.

\*For a detailed treatment of the required procedures when an adult is arrested for a “drunk driving” offense, see *Traffic Benchbook* (MJJ, 1999), Volume 2.

## 2.2 Required Procedures After Taking Juvenile Into Custody for a “Drunk Driving” Offense\*

As noted above in Section 2.1, a person, including a minor, may be taken into custody for an alleged violation of one of several “drunk driving” offenses. The Michigan Vehicle Code provides two basic investigatory techniques to determine whether a person has committed a “drunk driving” offense. Those techniques are the preliminary chemical breath analysis and the chemical testing of blood, breath, or urine.

**Note:** Except in cases where the prosecutor has decided to proceed under MCL 600.606; MSA 27A.606 (the “automatic” waiver statute), if a child less than 17 years of age is arrested, with or without a warrant, the child must immediately be taken before the Family Division of the county where the offense was allegedly committed. MCL 764.27; MSA 28.886. However, police officers may stop at the police station to complete booking procedures, type a delinquency petition, and, as required by statute, fingerprint the juvenile. *People v Hammond*, 27 Mich App 490, 493–94 (1970), *People v Coleman*, 19 Mich App 250, 253–54 (1969), and *People v Morris*, 57 Mich App 573, 575–76 (1975).

### A. Preliminary Breath Test

When a police officer has reasonable cause to suspect that a person was operating a motor vehicle, and that the person’s ability to operate the vehicle may be impaired by the consumption of intoxicating liquor, or that a person under 21 years of age is operating a vehicle with any bodily alcohol content, the officer may require the person to submit to a preliminary chemical breath analysis (commonly known as a “preliminary breath test” or “PBT”). MCL 257.625a(2); MSA 9.2325(1)(2). The police officer may “arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.” MCL 257.625a(2)(a); MSA 9.2325(1)(2)(a). A person who refuses to submit to a lawful request by a police officer to take a PBT is responsible for a civil infraction. MCL 257.625a(2)(d); MSA 9.2325(1)(2)(d). Thus, a juvenile taken into custody for an alleged “drunk driving” offense may be required to submit to a PBT.

### B. Chemical Testing of Blood, Breath, or Urine

In addition, the juvenile may be required to submit to chemical testing of his or her blood, breath, or urine. MCL 257.625a(2)(c); MSA 9.2325(1)(2)(c). MCL 257.625c(1); MSA 9.2325(3)(1), states:

“A person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for

the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

“(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), or (7), . . . or a local ordinance substantially corresponding to section 625(1), (3), or (6). . . .”\*

\*See Chapter 9 for a description of some of these offenses.

“(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle while impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or . . . if the person is less than 21 years of age while having any bodily alcohol content.”

The “implied consent” statute applies to a minor who operates a motor vehicle, and a police officer is not required to secure the consent of a parent prior to the administration of a chemical test of the minor’s blood, breath, or urine. OAG, 1985, No 6321, p 168 (November 8, 1985). See, however, MCL 712A.14(1); MSA 27.3178(598.14)(1), which requires an officer who takes a minor into custody to immediately attempt to notify the minor’s parent.

The initial choice of the type of test that will be offered to the person is made by the arresting officer. *Collins v Secretary of State*, 384 Mich 656 (1971).

A person arrested for an offense described in §625c(1) must be advised of all of the following:

- F if he or she takes a chemical test of his or her blood, urine, or breath administered at the request of a peace officer, he or she has the right to demand that a person of his or her own choosing also administer one of the chemical tests;
- F the results of the test are admissible in a judicial proceeding as provided under the Michigan Vehicle Code and will be considered with other admissible evidence in determining the defendant’s guilt or innocence;
- F he or she is responsible for obtaining a chemical analysis of a test sample obtained pursuant to his or her own request;
- F if he or she refuses the request of a peace officer to take a chemical test, a test shall not be given without a court order, but the peace officer may seek to obtain a court order; and
- F refusing a peace officer’s request to take a chemical test will result in suspension of his or her operator’s or chauffeur’s license and vehicle group designation or operating privilege and in the addition of 6 points to his or her driving record.

MCL 257.625a(6)(b); MSA 9.2325(1)(6)(b).

A sample of urine or breath may be taken and collected in a reasonable manner, but a sample of blood must be withdrawn only by a licensed physician or a person operating under the delegation of a licensed physician pursuant to MCL 333.16215; MSA 14.15(16215). MCL 257.625a(6)(c); MSA 9.2325(1)(6)(c). A chemical test must be administered at the request of a peace officer having reasonable grounds to believe the person has committed a crime described in §625c(1). MCL 257.625a(6)(d); MSA 9.2325(1)(6)(d).

A person who submits to a chemical test at an officer's request must be given a reasonable opportunity to have a person of his or her own choosing administer one of the chemical tests within a reasonable time after his or her detention. The test results are admissible and will be considered with other admissible evidence in determining the defendant's guilt or innocence. MCL 257.625a(6)(d); MSA 9.2325(1)(6)(d).

If the driver of a vehicle involved in an accident is taken to a medical facility and a sample of blood is withdrawn for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or both in the person's blood at the time alleged, regardless of whether the person was offered or refused a chemical test. The medical facility or person analyzing the sample must disclose the results to the prosecuting attorney upon request for use in a criminal prosecution. MCL 257.625a(6)(e); MSA 9.2325(1)(6)(e).

Upon obtaining the results of the chemical analysis of a driver's blood, breath, or urine, the officer must comply with MCL 257.625g; MSA 9.2325(7) (notification of Secretary of State, destruction of license or permit, and issuance of temporary license or permit).

### **C. Use of Search Warrants to Obtain Samples**

If the person refuses to submit to a chemical test, the officer must obtain a court order prior to the administration of the test. MCL 257.625d(1); MSA 9.2325(4)(1). The results of a preliminary chemical breath analysis may be used to establish the requisite probable cause for a search warrant to obtain a blood or urine sample for a chemical test. *People v Tracy*, 186 Mich App 171 (1990).

District court magistrates (when authorized by a district court judge), district court judges, municipal court judges, and circuit court judges have authority to issue search warrants. See MCL 600.8511(d); MSA 27A.8511(d), and MCL 761.1; MSA 28.843. Probate court judges do not have authority to issue search warrants. *Id.* Under MCL 780.651(3); MSA 28.1259(3), if the court order required under MCL 257.625a; MSA 9.2325(1), is issued as a search warrant, a judge may issue the warrant in person or by electronic means.

Because circuit court judges have authority to issue search warrants, it appears that there is no obstacle to a judge of the Family Division issuing a search warrant to obtain a sample of blood or urine from a juvenile pursuant to §625a of the Michigan Vehicle Code.

## 2.3 Notice and Custody Requirements When a Juvenile Is Charged With Illegal Transport or Possession of Alcoholic Liquor\*

MCL 257.624b(1); MSA 9.2324(2)(1), prohibits the transport or possession of alcoholic liquor in a motor vehicle by a person who is either the driver or passenger and is under 21 years old, unless required by the person's employment. If the person who allegedly violated this statute is less than 18 years old, the arresting officer must notify the minor's parent or parents, guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. This notice must be given within 48 hours after the officer determines that the person is less than 18 years old, and may be by any means reasonably calculated to give prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. MCL 257.624b(5); MSA 9.2324(2)(5).

A police officer may obtain custody of a person for a violation of MCL 436.1703; MSA \_\_. \_\_\* (minor purchasing, consuming, or possessing alcoholic liquor). An officer who witnesses a violation of this statute may stop and detain the person, obtain satisfactory identification, seize illegally possessed alcoholic liquor, and issue an appearance ticket under MCL 764.9b; MSA 28.868(2) (police officer may issue an appearance ticket and release person following alleged misdemeanor). MCL 436.1705; MSA \_\_. \_\_.

\*See Chapter 9 for a description of the offenses treated in this section.

\*Formerly MCL 436.33b; MSA 18.1004(2). See 1998 PA 353.

**Note:** MCL 764.9b; MSA 28.868(2), has been repealed. See 1999 PA 76.

If the police officer has reasonable cause to believe a minor has consumed alcoholic liquor, the officer may require the minor to submit to a preliminary chemical breath test (PBT). The police officer may arrest a minor based on the results of the PBT. Refusal of a minor to submit to a PBT constitutes a civil infraction. MCL 436.1703(5); MSA \_\_. \_\_.

If the minor is less than 18 years old and unemancipated, the arresting officer must notify the minor's parent or parents, guardian, or custodian if the name of the parent, guardian, or custodian is reasonably ascertainable. This notice must be given within 48 hours after the officer determines that the person is less than 18 years old, and may be by any means reasonably calculated to give prompt actual notice of the offense, including notice in person, by telephone, or by first-class mail. If the minor is unemancipated, less than 17 years old, and incarcerated for a violation of MCL 436.1703; MSA \_\_. \_\_, the minor's parents or legal guardian must be notified immediately. MCL 436.1703(6); MSA \_\_. \_\_.

## 2.4 General Rules for Obtaining Custody of a Juvenile Without a Court Order

MCL 712A.14; MSA 27.3178(598.14), MCR 5.933, and MCR 5.934 discuss the procedures to follow when taking a juvenile into temporary custody and when detaining or “lodging” a juvenile pending a preliminary hearing in the Family Division. See MCR 5.903(B)(1) (detention means *court-approved* removal of a juvenile from parental custody). These procedures apply whenever a juvenile has committed an “offense.” Under MCR 5.903(B)(4), “offense by a juvenile” includes violations of criminal statutes, ordinances, and traffic laws other than civil infractions.

## 2.5 Obligations of Officer Immediately After a Juvenile Is Taken Into Custody

MCL 712A.14(1); MSA 27.3178(598.14)(1), allows a police officer, sheriff, or deputy sheriff, without a court order, to take into custody any juvenile who is found violating any law or ordinance, or whose surroundings are such as to endanger the juvenile’s health, morals, or welfare. After apprehending the juvenile, the officer must immediately attempt to notify the juvenile’s parent, guardian, or custodian. While awaiting arrival of the parent, guardian, or custodian, the officer may hold the juvenile in a detention facility only if the juvenile can be isolated so as to prevent any verbal, visual, or physical contact with any adult prisoner. See also MCR 5.933(D) (court rule mirrors statutory language on separation of juvenile from adult prisoners).

## 2.6 Obligations of Officer After Notification or Attempt to Notify Parent, Guardian, or Custodian

MCR 5.933(A)(1)–(3) discuss in detail the procedures that must be followed by the officer or agent following the notification or attempt to notify the juvenile’s parent, guardian, or custodian. The officer may warn and release the juvenile, or refer the juvenile to a diversion program.\* If neither of these is done, the officer may:

- F issue a citation or ticket to appear at a time and date to be set by the court and release the juvenile;
- F accept a written promise of the parent to bring the juvenile to court, if requested, at a date and time to be set by the court, and release the juvenile to the parent; or
- F take the juvenile into custody and submit a petition.

MCR 5.933(A)(1)–(3).

The officer may take the juvenile into custody and submit a petition under MCR 5.933(A)(3) if either of the following circumstances exist:

\*See Section 4.8 for a general discussion of the use of diversion in traffic cases.



- F the officer has reason to believe that due to the nature of the offense, the interest of the juvenile or the interest of the public would not be protected by release of the juvenile, or
- F a parent cannot be located or the parent refuses to take custody of the child.

MCR 5.933(A)(3)(a)–(b).

MCR 5.933(C)(1)–(3) require the officer taking custody of the juvenile to *immediately contact the court* if:

- F the officer or agent detains the juvenile;
- F the officer or agent is unable to reach a parent who will appear promptly to accept custody of the juvenile; or
- F the parent will not agree to sign a written promise to bring the juvenile to court.

The court must designate a judge, referee, or other person who may be contacted by the officer taking a juvenile into custody when the court is not open. In each county there must be a designated facility open at all times at which an officer may obtain the name of the person to be contacted for permission to detain the juvenile pending preliminary hearing. MCR 5.934(B)(2).

MCR 5.934(B)(1) states that when a juvenile is apprehended without a court order and the court is not open, the juvenile may be detained pending a preliminary hearing if no parent can be located, or if the juvenile or the offense meets the criteria set forth in MCR 5.935(D)(2).\*

\*See Miller, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJJ, 1998), Section 3.4.

## 2.7 Additional Obligations of Officer If Juvenile Is Not Released

MCR 5.934(A)(1)–(4) set forth four obligations of an officer when a juvenile is apprehended and not released. The officer must:

- F forthwith take the juvenile before the court for a preliminary hearing, or to a place designated by the court pending the scheduling of a preliminary hearing;
- F ensure that a petition [or complaint] is prepared and presented to the court;
- F notify the parent that the juvenile has been detained and that the presence of the parent at the preliminary hearing is necessary; and
- F prepare a custody statement for submission to the court including:
  - the grounds for and the time and location of the detention, and
  - the names of persons notified and the time of notification, or the reason for failure to notify.

\*See JC 02.

## 2.8 Required Procedures Following a Failure to Appear or Comply With Judgment

If the juvenile is a Michigan resident and fails to appear or otherwise respond to any matter pending relative to a violation of the Motor Vehicle Code, the court:

- F must initiate the procedures required by MCL 257.321a(1); MSA 9.201(1), for failure to answer a citation, and
- F may issue an order to apprehend the juvenile after a sworn petition is filed with the court.

MCR 5.931(D)(1)–(2).

MCL 257.321a(1); MSA 9.2021(1)(1), provides that a person who fails to answer a citation or a notice to appear in court, or who fails to comply with an order or judgment of the court (including paying all fines, costs, fees, and assessments), is guilty of a misdemeanor.

In cases other than those involving the offenses listed below, the court must wait at least 28 days after the person fails to appear. The court must then mail notice by mail to the person's last-known address that if the person fails to appear within 14 days, the Secretary of State will suspend the person's operator's or chauffeur's license. MCL 257.321a(2); MSA 9.2021(1)(2). If the person fails to comply with this notice, the court must notify the Secretary of State within 14 days, who suspends the person's license. *Id.*

If the person is charged with a violation of any of the following offenses, the court must immediately mail the required notice. The person then has only seven days in which to appear. MCL 257.321a(3)–(4); MSA 9.2021(1)(3)–(4). If the person fails to comply with this notice, the court must immediately notify the Secretary of State, who suspends the person's license. *Id.* The offenses are:

- F driving under the influence of alcoholic liquor and/or a controlled substance, MCL 257.625(1)(a); MSA 9.2325(1)(a), or a local ordinance substantially corresponding to this section;
- F driving with an unlawful bodily alcohol content, MCL 257.625(1)(b); MSA 9.2325(1)(b), or a local ordinance substantially corresponding to this section;
- F knowingly permitting a person who is under the influence of alcoholic liquor and/or a controlled substance to drive, MCL 257.625(2); MSA 9.2325(2), or a local ordinance substantially corresponding to this section;
- F driving while visibly impaired, MCL 257.625(3); MSA 9.2325(3), or a local ordinance substantially corresponding to this section;
- F driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing death, MCL 257.625(4); MSA 9.2325(4);

- F driving under the influence of alcoholic liquor and/or a controlled substance, or while visibly impaired, causing serious impairment of a body function, MCL 257.625(5); MSA 9.2325(5);
- F person under 21 years of age driving with any bodily alcohol content, MCL 257.625(6); MSA 9.2325(6), or a local ordinance substantially corresponding to this section;
- F driving in violation of §625(1), (3), (4), (5), or (6), while a person less than 16 years of age is occupying the vehicle, MCL 257.625(7); MSA 9.2325(7);
- F transporting or possessing alcoholic liquor in open container, MCL 257.624a; MSA 9.2324(1);
- F transport or possession of alcoholic liquor in a motor vehicle by a person under 21 years old, unless required by the person's employment, MCL 257.624b; MSA 9.2324(2); and
- F purchase, consumption, or possession of alcoholic liquor by person under age 21, MCL 436.1703; MSA \_\_\_\_.

The court may issue an order authorizing a peace officer or other person designated by the court to apprehend a juvenile who has failed to appear for a hearing. MCL 712A.2c; MSA 27.3178(598.2c).

In addition, if the case was initially placed on the consent calendar and the juvenile fails to appear when required, the court may place the case on the formal calendar. MCR 5.932(B)(3).

## 2.9 Driver's License Clearance Fees

MCL 257.321a(5)(a)–(b); MSA 9.2021(1)(5)(a)–(b), states:

“(5) A suspension imposed under subsection (2) or (3)[\*] remains in effect until both of the following occur:

“(a) The secretary of state is notified by each court in which the person failed to answer a citation or notice to appear or failed to pay a fine or cost that the person has answered that citation or notice to appear or paid that fine or cost.

“(b) The person has paid to the court a \$25.00 driver license clearance fee for each failure to answer a citation or failure to pay a fine or cost.”

\*Subsection (4) also provides for suspension of drivers' licenses for certain offenses. See Section 2.8, immediately above. It is unclear whether the suspension may be cleared for those violations in the same manner as for those violations in subsections (2) and (3).

